A **KERAJAAN MALAYSIA & ORS**

v.

TAY CHAI HUAT

B FEDERAL COURT, PUTRAJAYA
ARIFIN ZAKARIA CJ
HASHIM YUSOFF FCJ
MOHD GHAZALI YUSOFF FCJ
[CIVIL APPEAL NO: 01(F)-8-2010(N)]
C 19 JANUARY 2012

ADMINISTRATIVE LAW: *Exercise of administrative powers - Dismissal from service - Public officer - Whether case required further clarification through appointment of Committee of Inquiry - Whether*
D *failure to hold oral enquiry rendered disciplinary authority's decision null and void - Federal Constitution, art. 135(2) - Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980*

CONSTITUTIONAL LAW: *Public servants - Disciplinary proceedings - Disciplinary Authority found police inspector's representation to charges*
E *failed to show sufficient cause - Inspector dismissed without Committee of Inquiry being set up - Whether opinion of Disciplinary Authority that case did not require further clarification through Committee of Inquiry could be reviewed/scrutinised by court - Whether incumbent on accused to ask for*
F *oral hearing or necessary documents to answer charges - Federal Constitution, art. 135(2) - Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980*

POLICE: *Disciplinary proceedings - Dismissal - Disciplinary Authority found police inspector's representation to charges failed to show sufficient*
G *cause - Inspector dismissed without Committee of Inquiry being set up - Whether opinion of Disciplinary Authority that case did not require further clarification through Committee of Inquiry could be reviewed/ scrutinised by court - Whether incumbent on accused to ask for oral hearing or necessary documents to answer charges - Public Officers*
H *(Conduct and Discipline) (Chapter D) General Orders 1980*

The respondent, who was an Inspector with the Royal Malaysian Police, was dismissed from the police force after the Disciplinary Authority ('DA') found his written representation in response to a
I show-cause letter on five disciplinary charges failed to show sufficient cause. The action against him was taken pursuant to the

Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 ('GO Chapter D'). The charges against the respondent alleged he took bribes from illegal gambling operators, developed a close relationship with them in conflict with his public duty and failed to report to his superior officer about, and failed to take action against, persons involved in illegal gambling and secret society activities. In his written representation ('the representation'), the respondent denied the charges and said he was being victimised by certain parties. The respondent filed an action for a declaration that his dismissal was unlawful, null and void and that he was still an Inspector in the force entitled to his salary, emoluments and benefits. The High Court decided in the respondent's favour, holding that the failure to set up a Committee of Inquiry under GO Chapter D to require further clarification from the respondent was a breach of natural justice. He should have been allowed to know the evidence against him so that he could have defended himself effectively. The Court of Appeal dismissed the appellant's appeal. It held, *inter alia*, that: (i) the representation was not a bare denial of the charges but had merits; (ii) the respondent had previously been cleared of somewhat similar charges; (iii) the present charges spanned over several years and there was long and unexplained delay in the taking of disciplinary action against him; (iv) a Committee of Inquiry should have been set up to ascertain the truth of the charges; and (v) the DA had not fairly and adequately considered the representation. The appellant obtained leave to appeal to the Federal Court.

Held (allowing the appeal with costs and setting aside all orders of the courts below)
Per Arifin Zakaria CJ:

(1) The appeal should be allowed on the narrow ground that there was no request from the respondent for the appointment of a Committee of Inquiry under Order 26(5) of the GO Chapter D. As such, the disciplinary board should not be faulted for failing to do so. (para 1)

(2) The respondent did not at any stage request for an oral hearing or for any document to be furnished to him. Therefore, he could not complain that such right was not afforded to him. It was for him to request for an oral hearing or for any document that he thought could help him to prepare his answer to the charges against him. (para 3)

Per Mohd Ghazali Yusoff FCJ (Hashim Yusoff FCJ concurring):

(1) The opinion of a DA that the case against a public officer did not require further clarification through the appointment of a Committee of Inquiry under General Order 26(5) of the GO Chapter D was not subject to review or scrutiny by the court. (para 38)

(2) An oral hearing may be given in instances where the DA considered the case against the officer required further clarification and consequently appointed a Committee of Inquiry. If it considered no further clarification was required, the officer concerned could not insist or demand that a Committee of Inquiry be appointed. (para 24)

(3) The DA was the best judge as to whether the person should be dismissed. The court could only interfere in a limited number of cases where it was shown the decision to suspend was arbitrary and/or a *mala fide* exercise of power and/or a colourable exercise of power. Otherwise than in the circumstances set out, it was not for the courts to interfere with the exercise of discretion by the DA. (para 25)

(4) The DA did observe the rules of natural justice and gave the respondent an opportunity to be heard. He was informed of the charges against him and given ample opportunity to deny or explain the alleged misconduct and he gave his written representation to the Inspector-General of Police. (para 33)

(5) The respondent failed to establish any error of law or fact or of judgment on the part of the DA. (para 37)

(6) The erroneous approach taken by the trial court and the Court of Appeal was as if the matter was a criminal case where provisions of the Criminal Procedure Code and the Evidence Act would apply. The courts could not introduce technicalities of a court of law to the DA where the proceedings were not concerned with a criminal offence but with misconduct. (paras 28 & 29)

Obiter:

(1) A precedent can be defined as a judicial decision which serves as a rule for future determinations in similar or analogous cases. This court must follow its own proclamation of law made earlier on other cases and honour the ruling. Precedents

not only have persuasive authority but also must be followed when similar circumstances arise and the judges are obliged to obey the set-up precedents. This legal principle is called *stare decisis*. Adherence to precedent helps to maintain a system of stable laws and its use had been justified as providing predictability, stability, fairness and efficiency in the law. This court creates precedents. The use of precedent is an indispensable foundation on which to decide what is the law and how it should be applied in individual cases. *Utra Badi* and *Vickneswary* are decisions that settled the law in cases of this genre with finality. The court would have need to hesitate long before distinguishing *Utra Badi* and *Vickneswary* on inadequate grounds or on hypothetical issue raised by the appellants in appeals before this court such as whether there are exceptions to the *ratio decidendi* formulated in both authorities. Such hypothetical issues raised in cases of this genre can have disruptive and seemingly unfair consequences and extremely capricious results. It creates uncertainty in the law and would seriously hinder administration of the General Orders by the government departments resulting in administrative confusion.

Bahasa Malaysia *Translation Of Headnotes*

Responden, seorang Inspektor dalam pasukan Polis DiRaja Malaysia, dipecat daripada pasukan polis selepas Pihak Berkuasa Tatatertib ('PBT') mendapati representasi bertulisnya dalam menjawab surat tunjuk sebab atas lima pertuduhan tatatertib gagal menunjukkan kausa yang mencukupi. Tindakan terhadapnya diambil berikutan Perintah-Perintah Am Pegawai Awam (Kelakuan dan Tatatertib) (Bab D) 1980 ('Perintah-Perintah Am 1980'). Pertuduhan-pertuduhan terhadap responden mendakwa dia menerima rasuah daripada pengendali judi haram, membuat hubungan rapat dengan mereka bertentangan dengan tugas amnya dan gagal melaporkan kepada pegawai atasannya mengenai, dan gagal mengambil tindakan terhadap, individu-individu yang terlibat dalam aktiviti-aktiviti judi haram dan persatuan rahsia. Di dalam representasi bertulisnya ('representasi'), responden menafikan pertuduhan-pertuduhan tersebut dan menyatakan bahawa dia dijadikan mangsa oleh pihak-pihak tertentu. Responden memfailkan

tindakan untuk deklarasi bahawa pemecatannya salah di sisi undang-undang, batal dan tidak sah dan bahawa dia masih seorang Inspektor di dalam pasukan tersebut berhak kepada gaji, ganjaran dan faedah-faedah. Mahkamah Tinggi memutuskan memihak kepada responden, menyatakan bahawa kegagalan untuk menubuhkan Jawatankuasa Siasatan di bawah Perintah-Perintah Am 1980 untuk mendapatkan penjelasan lanjut daripada responden adalah pelanggaran keadilan semulajadi. Dia sepatutnya dibenarkan untuk mengetahui keterangan terhadapnya untuk membolehkan dia membela diri secara berkesan. Mahkamah Rayuan menolak rayuan perayu. Ia memutuskan, antara lain, bahawa: (i) representasi tersebut bukan penafian pertuduhan-pertuduhan tersebut semata-mata tetapi mempunyai merit; (ii) responden telah sebelum ini dibebaskan daripada pertuduhan-pertuduhan yang serupa; (iii) pertuduhan-pertuduhan semasa berlaku dalam tempoh beberapa tahun dan terdapat kelewatan yang berpanjangan dan tidak dijelaskan dalam mengambil tindakan tatatertib terhadapnya; (iv) satu Jawatankuasa Siasatan sepatutnya telah ditubuhkan untuk menentukan kebenaran pertuduhan-pertuduhan tersebut; dan (v) PBT tidak mempertimbangkan representasi tersebut secara adil dan mencukupi. Perayu memperoleh kebenaran untuk merayu ke Mahkamah Persekutuan.

Diputuskan (membenarkan rayuan dengan kos dan mengenepikan kesemua perintah mahkamah di bawah)
Oleh Arifin Zakaria KHN:

(1) Rayuan tersebut seharusnya dibenarkan atas alasan terhad bahawa tidak ada permintaan daripada responden untuk pelantikan Jawatankuasa Siasatan di bawah Perintah Am 26(5) Perintah-Perintah Am 1980. Oleh demikian, lembaga tatatertib tidak wajar dipersalahkan bagi kegagalan berbuat demikian.

(2) Responden tidak, pada mana-mana peringkat, memohon untuk pendengaran lisan atau apa-apa dokumen diberikan kepadanya. Oleh itu, dia tidak boleh mengadu bahawa hak tersebut tidak diberikan kepadanya. Adalah untuk dia sendiri meminta untuk pendengaran lisan atau untuk apa-apa dokumen yang difikirkannya boleh membantunya untuk menyediakan jawapan bagi pertuduhan-pertuduhan terhadapnya.

Oleh Mohd Ghazali Yusoff HMP (Hashim Yusoff HMP bersetuju):

(1) Pendapat PBT bahawa apa-apa kes terhadap seorang pegawai awam tidak memerlukan penjelasan lanjut melalui penubuhan Jawatankuasa Siasatan di bawah Perintah Am 26(5) Perintah-Perintah Am 1980 adalah tidak tertakluk kepada semakan atau kajian mahkamah.

(2) Pendengaran lisan boleh diberikan di dalam keadaan di mana PBT merasakan bahawa kes terhadap pegawai tersebut memerlukan penjelasan lanjut dan dengan itu melantik Jawatankuasa Siasatan. Jika ia merasakan bahawa penjelasan lanjut tidak diperlukan, pegawai yang berkenaan tidak boleh mendesak atau menuntut bahawa Jawatankuasa Siasatan ditubuhkan.

(3) PBT adalah hakim yang paling baik dalam menentukan sama ada seseorang wajar dipecat. Mahkamah hanya boleh campur tangan dalam kes-kes yang terhad di mana ditunjukkan bahawa keputusan untuk menggantung dibuat secara sewenang-wenangnya dan/atau pelaksanaan kuasa secara *mala fide* dan/atau pelaksanaan kuasa yang tidak telus. Selain daripada keadaan yang dibentangkan, mahkamah tidak harus campur tangan dalam pelaksanaan budi bicara PBT.

(4) PBT telah mematuhi rukun-rukun keadilan semulajadi dan memberikan responden peluang untuk didengar. Dia diberitahu mengenai pertuduhan-pertuduhan terhadapnya dan diberikan peluang yang banyak untuk menafikan atau menjelaskan salah laku yang didakwa dan dia memberikan respresentasi bertulisnya kepada Ketua Polis Negara.

(5) Responden gagal membuktikan apa-apa kesilapan undang-undang atau fakta atau penghakiman di pihak PBT.

(6) Pendekatan salah yang diambil oleh mahkamah bicara dan Mahkamah Rayuan adalah kerana menganggap kes tersebut sebagai kes jenayah di mana peruntukan-peruntukan Kanun Tatacara Jenayah dan Akta Keterangan akan beraplikasi. Mahkamah-mahkamah tidak boleh menggunapakai persoalan-persoalan teknikal mahkamah undang-undang kepada PBT di mana prosidingnya tidak berkaitan dengan kesalahan jenayah tetapi salah laku.

A ***Obiter:***

(1) Sesuatu duluan boleh ditafsirkan sebagai keputusan kehakiman yang bertindak sebagai peraturan bagi pertimbangan pada masa akan datang dalam kes-kes yang serupa atau yang sepertinya. B Mahkamah ini mesti mengikuti perisytiharan undang-undangnya sendiri yang dibuat terdahulu dalam kes-kes dan menghormati keputusan tersebut. Duluan bukan sahaja mempunyai kuasa meyakinkan tetapi mesti diikuti apabila keadaan serupa timbul dan hakim-hakim berkewajipan untuk mematuhi duluan yang C ditetapkan. Prinsip undang-undang ini dikenali sebagai stare decisis. Pematuhan kepada duluan membantu mengekalkan sistem undang-undang yang stabil dan kegunaannya adalah wajar sebagai memberikan kebolehramalan, kestabilan, keadilan dan keberkesanan dalam undang-undang. Mahkamah ini D membentuk duluan. Kegunaan duluan adalah asas yang amat diperlukan untuk menentukan apakah undang-undang dan bagaimana ia diaplikasi dalam kes-kes tertentu. *Utra Badi* dan *Vickneswary* adalah keputusan-keputusan yang menetapkan undang-undang dalam genre kes ini dengan kemuktamadan. E Mahkamah mungkin perlu berfikir panjang sebelum membezakan *Utra Badi* dan *Vickneswary* atas alasan yang tidak mencukupi atau atas isu-isu andaian yang dibangkitkan oleh perayu-perayu dalam rayuan di mahkamah ini seperti sama ada terdapat pengecualian kepada *ratio decidendi* yang ditetapkan F dalam kedua-dua otoriti tersebut. Isu-isu andaian yang dibangkitkan sedemikian dalam kes-kes genre ini boleh mempunyai akibat yang mengganggu dan tidak adil dan keputusan yang sewenang-wenangnya. Ia membentuk ketidaktentuan dalam undang-undang dan akan menghalang G secara serius pentadbiran Perintah Am oleh jabatan-jabatan kerajaan yang mengakibatkan ketidaktentuan pentadbiran.

Case(s) referred to:

B Surinder Singh Kanda v. The Government of the Federation of Malaya [1962] 1 LNS 14 PC ***(refd)***

H *Chief Constable of the North Wales Police Force v. Evans [1982] 1 WLR 1155* ***(refd)***

Ghazi Mohd Sawi v. Mohd Haniff Omar, Ketua Polis Negara, Malaysia & Anor [1994] 2 CLJ 333 SC ***(refd)***

Hajjah Halimatussaadiah Haji Kamaruddin v. Public Services Commission, Malaysia & Anor [1994] 3 CLJ 532 SC ***(refd)*** I

Jones v. Secretary of State for Social Services [1972] All ER 145 ***(refd)***
Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi K Perumal [2001] 2 CLJ 525 FC ***(foll)***
Mat Ghaffar Baba v. Ketua Polis Negara & Anor [2008] 1 CLJ 773 CA ***(dist)***
Mohd Ahmad v. Yang di Pertua Majlis Daerah Jempol, Negeri Sembilan & Anor [1997] 3 CLJ 135 FC ***(refd)***
M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor [2005] 3 CLJ 778 CA ***(refd)***
Najar Singh v. Government of Malaysia & Anor [1974] 1 LNS 101 FC ***(refd)***
Ng Hock Cheng v. Pengarah Am Penjara & Ors [1998] 1 CLJ 405 FC ***(refd)***
Public Services Commission Malaysia & Anor v. Vickneswary RM Santhivelu [2008] 6 CLJ 573 FC ***(foll)***
R v. Deputy Industrial Injuries Commissioner, ex p Moore [1965] 1 QB 456 ***(refd)***
The London Street Tramways Company, Limited v. The London City Council [1898] AC 375 ***(refd)***
West Midland Baptist (Trust) Association Inc v. Birmingham Corporation [1970] AC 874 ***(refd)***
Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor [2012] 1 CLJ 448 FC ***(not foll)***
Zainal Hashim v. Government of Malaysia [1979] 1 LNS 132 PC ***(refd)***

Legislation referred to:
Federal Constitution, art. 135(2)
Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980, GO 4(2)(f), (g), (i), 26(5)

For the appellants - Suzana Atan SFC
For the respondent - Murad Ali Abdullah (Rajinder Singh Gurbachan Singh with him); M/s Morthi Segaran & Co

[Appeal from Court of Appeal; Civil Appeal No: N-01-12-2007]

[Editor's note: For the Court of Appeal judgment, please see Kerajaan Malaysia & Ors v. Tay Chai Huat [2011] 1 CLJ 592.]

Reported by Ashok Kumar

JUDGMENT

Arifin Zakaria CJ:

[1] I have had the advantage of reading the judgment of my learned brother Mohd Ghazali bin Mohd Yusoff (FCJ), I agree that the appeal should be allowed on the premise that there was

no request from the respondent for the appointment of Committee of Inquiry under O. 26(5) of the General Orders 1980. As such, the disciplinary board should not be faulted for failing to do so. I would, therefore, allow this appeal on that narrow ground.

[2] I should also add that the facts in the present case can be distinguished from that of *Mat Ghaffar Baba v. Ketua Polis Negara & Anor* [2008] 1 CLJ 773. In that case, there was a request made by the appellant to the disciplinary authority to cross-examine the persons named in the charges proffered against him and for certain documentary evidence to be made available to him, which was denied. Similarly, in the case of *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor* [2012] 1 CLJ 448. In that case, the appellant explicitly requested for an oral hearing for the reasons stated in his letter. In both these cases, it was held that in the circumstances of the case, an oral hearing ought to have been granted. The above authorities affirmed that if the right to be heard under art. 135(2) is to have a real meaning, the circumstances in each case must be fully considered before the court could come to the conclusion whether or not such right has been properly observed by the disciplinary authority. (See also *B Surinder Singh Kanda v. The Government of the Federation of Malaya* [1962] 1 LNS 14)

[3] In the present case, the respondent did not at any stage request for an oral hearing or for any document to be furnished to him. Therefore, he could not complain that such right was not afforded to him. It is for him to request for an oral hearing or for any document that he thinks could help him to prepare his answer to the charges levelled against him. In *Mat Ghaffar Baba (supra)* and *Yusof Sudin (supra)*, a request for oral hearing was made by the officers concerned, but was denied. The courts held that such refusal was unreasonable in the circumstances of the case and the courts went on to hold that the officers, in the circumstances, had not been afforded the right of hearing in its proper sense. On this ground, the decisions of the disciplinary authority were quashed.

[4] For the above reasons, I would answer the question posed to us in the negative and the appeal be allowed with costs.

Mohd Ghazali Yusoff FCJ:

[5] The appellants (the defendants in the originating action) are the Government of Malaysia, the Police Service Commission, the Inspector-General of Police and the Deputy Inspector-General of

Police, respectively. The respondent (the plaintiff in the originating action) was formerly a police officer with the Malaysian Police Force holding the rank of Inspector. I will hereafter refer to the parties as they were in the High Court.

[6] On 4 November 2010, this court granted the defendants leave to appeal on the following question of law:

> Whether the opinion of the Disciplinary Authority that the case against the officer does not require further clarification through the appointment of a Committee of Investigation under general order 26(5) General Order D 1980, is subject to a review/scrutiny by the Courts.

The Background

[7] *Vide* letter dated 27 September 1993 the Deputy Inspector-General of Police (the fourth defendant) informed the plaintiff of his intention to commence disciplinary action against the latter pursuant to GO 26 of the Public Officers (Conduct and Discipline) (Chapter D) General Orders 1980 (hereafter referred to as "GO (Chapter D)") with a view to his dismissal (hereafter referred to as "the show-cause letter"). The show-cause letter contained five charges of disciplinary offences. The essence of the five disciplinary offences were as follows:

(a) found to be dishonest, to wit, receiving monthly bribes of RM1,000 between 1 January to 30 June 1989, 1 August 1989 to 31 July 1990 and 1 September 1990 to 18 September 1990 from one Chong Lee Lin, an illegal four digit operator which is a disciplinary offence under GO 4(2)(f) of the GO (Chapter D);

(b) found to be dishonest, to wit, receiving monthly bribes of RM200 between 1 January 1987 to 31 March 1989 and RM300 monthly between 1 April 1989 to 21 September 1990 from one Khu Tee Sing, an illegal four digit operator which is a disciplinary offence under GO 4(2)(f) of the GO (Chapter D);

(c) found to have conducted himself in a manner likely to cause reasonable suspicion that he allowed his private interests to come into conflict with his public duty, to wit, having established a close relationship with illegal four digit operators, namely, one Chong Lee Lin and one Khu Tee Sing between

1 January 1987 to 21 September 1990 knowing that they were operating in Seremban and as such have committed a disciplinary offence under GO 4(2)(i) of the GO (Chapter D);

(d) found to be irresponsible, to wit, failing to take police action against Chong Lee Lin, Khu Tee Sing, Lue Chan Kong, Chong Cham and Wee Loke Choon and their syndicate between 1 January 1982 to 21 September 1990 relating to their illegal activities in Seremban which is a disciplinary offence under GO 4(2)(g) of the GO (Chapter D); and

(e) found to be irresponsible, to wit, failing to report to his superior officer in connection with the illegal four digit activities carried out by Chong Lee Lin, Khu Tee Sing, Lue Chan Kong, Chong Cham and Wee Loke Choon and their syndicate between 1 January 1982 to 21 September 1990 and as such have committed a disciplinary offence under general order 4(2)(g) of the GO (Chapter D).

[8] Upon receipt of the show-cause letter the plaintiff forwarded his written representation dated 19 October 1993 (hereafter referred to as "the representation") to the Inspector-General of Police (the third defendant) wherein he denied having committed the disciplinary offences and contended that he believed he was victimised by the said illegal four digit operators mentioned in the charges.

[9] The representation was considered by the disciplinary authority and it was its finding that the representation has not shown sufficient cause. *Vide* letter dated 25 January 1994 the Inspector-General of Police informed the plaintiff of his dismissal from the police force.

[10] By writ of summons dated 22 November 1994, the plaintiff sought a declaration that his dismissal from the police force is unlawful, null and void and of no effect and that he is still an Inspector and entitled to all the salaries, emoluments and benefits due.

The High Court

[11] In canvassing the plaintiff's case in the High Court, learned counsel referred to, *inter alia*, *M Sentivelu R Marimuthu v. Public Services Commission Malaysia & Anor* [2005] 3 CLJ 778, a decision of the Court of Appeal and argued that the defendants have acted contrary to the rules of natural justice.

[12] In her reply, learned federal counsel for the defendants pointed out that the judgments of this court relating to the same genre of cases, including *Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333, showed that a similar procedure under the GO (Chapter D) adopted by the police force was held not to be contrary to the rules of natural justice, complied with the GO (Chapter D) and did not breach art. 135(2) of the Federal Constitution.

[13] The learned trial judge, Azhar Ma'ah J (as then was) granted the declaration and the other reliefs sought by the plaintiff. His finding reads:

> Di dalam keadaan dan dengan mengambil kira senario yang menyelubungi pertuduhan-pertuduhan terhadap plaintif maka Mahkamah ini berpendapat bahawa plaintif wajar diberi peluang untuk melihat dan mengetahui apakah keterangan-keterangan yang menjadi asas kepada pertuduhan-pertuduhan terhadapnya. Walaupun sama ada memanggil atau tidak sesuatu enkuiri itu merupakan satu budibicara defendan ketiga/keempat namun budibicara tersebut perlulah digunakan mengikut keadaan dan keperluan sesuatu kes itu. Di dalam keadaan kes semasa saya berpendapat bahawa satu enkuiri perlu diadakan untuk membolehkan plaintif mempertahankan diri secara eksostif, adil dan saksama memandangkan hukuman yang bakal dikenakan ke atas plaintif amat berat sekali. Ini telah gagal dilakukan oleh defendan ketiga/keempat. Berdasarkan hal-hal yang dinyatakan di atas maka adalah pendapat Mahkamah ini bahawa defendan ketiga/keempat telah melakukan pelanggaran "rule of natural justice" di dalam membuat keputusan memecat plaintif.

[14] The above excerpt from the judgment of the trial judge illustrated that he was of the view that looking at the nature of the disciplinary charges preferred against the plaintiff, the disciplinary authority should have held an oral inquiry and that under the facts of the case, this failure to do so is a breach of the "rule of natural justice". His decision was based on the following premises:

(a) that the disciplinary charges preferred were vague and not specific;

(b) that the plaintiff should have been afforded an oral hearing because there was a third party involved in the disciplinary charges; and

(c) that it was the responsibility of the defendants to provide documents to the plaintiff, even when there was no request.

The Court Of Appeal

[15] In dismissing the appeal by the defendants, the Court of Appeal was of the view that the long delay in issuing the show-cause letter and in instituting the disciplinary action when viewed together with the other facts should have prompted an alert disciplinary authority to call for further clarification to ascertain the truth of the allegations against the plaintiff. Abu Samah Nordin JCA, in delivering the judgment of the court said:

> (41) Let us now turn to the facts in the instant appeal. Was there sufficient material before the Disciplinary Authority for it to consider that the respondent's case would require further clarification and the setting up of a Committee of Inquiry?
>
> (42) It seemed that the respondent's tenure as an investigation officer in the Police Contingent Headquarters Negeri Sembilan was full of trials and tribulations. The respondent had to cope with a myriad of allegations basically due to the nature of his work. The unfounded allegations levelled against him and the facts which formed the basis of disciplinary charges against him, all happened at or about the same time. Yet the respondent persevered and his services were duly recognised when he received letters of commendations from two successive State Police Officers. But there were evil forces working against him. One thing was however clear. The allegations against the respondent which turned out to be untrue or unsubstantiated and the facts which formed the basis of the disciplinary charges against him were within the knowledge of the third or fourth appellant. The Director of Criminal Investigations who cleared him of the allegations, wrote the letter dated 26 April 1989 on behalf of the third appellant. The show cause letter dated 27 September 1993 was signed by one Mohd Yusuf Said on behalf of the fourth appellant. The respondent's reply to the show cause letter was addressed to the third appellant. In short, all the information in favour of and against the respondent were already within the knowledge of his superiors in Bukit Aman police headquarters. Based on that information they should be able to weigh and evaluate the evidence against the respondent fairly and justly and decide whether or not to seek further clarification from the respondent.

(43) We have read the respondent's written representation and verified its contents with the facts and particulars in Appendixes A to K. These appendixes contain the monthly minutes or the meetings held at the Police Contingent Headquarters at Seremban. What the respondent said in his written representation were substantiated by the minutes of the meetings. The involvement of Chong Lee Lin and Lue Chan Kong, among others, in secret societies activities and illegal gambling syndicate were discussed at the monthly meetings and the respondent had in fact recommended appropriate actions be taken against them, including detention under the Restricted Residence Act 1933. What the respondent said in his written representation was not just bare denials. He had also earlier been cleared of somewhat similar allegations. That was a factor in his favour.

(44) The allegations of fact in the present charges against him spanned over several years. There was a long and unexplained delay in instituting disciplinary action against him. He had been told that the show cause letter was with a view to his dismissal. It must be borne in mind that there is no remedy for appeal under the General Orders 1980. The decision that the Disciplinary Authority was about to make, in view of the gravity of the charges against him would be irreversible. The long delay in issuing the show cause letter and in instituting the disciplinary action against the respondent is not by itself a ground for holding that there was procedural unfairness (*Public Services Commission Malaysia & Anor v Vickneswary a/p RM Santhivelu* [2008] 6 CLJ 573). But when it is viewed together with the other facts as adverted to earlier it should have prompted an alert Disciplinary Authority to ascertain the truth of the allegations against the respondent.

(45) In the circumstances of this case, we were of the view that the Disciplinary Authority, in exercise of its discretion, had not fairly or adequately considered the written representation by the respondent. It had not fully weighed and appreciated the respondent's representation which was not mere denials. By failing to keep an open mind and to consider calling him for further clarification the Disciplinary Authority had effectively closed its doors to the respondent and in the process fettered its own discretion. Thus, the respondent was denied the reasonable opportunity to have his case heard before the Disciplinary Authority.

(46) For the aforesaid reasons, we dismissed the appeal with costs.

From my reading of the judgment of the Court of Appeal, it would seem that the grounds for dismissing the appeal were as follows:

(a) that there was sufficient material before the disciplinary authority for it to consider that the plaintiff's case would require further clarification and the setting up a Committee of Inquiry (as provided for under the GO (Chapter D)); and

(b) that the disciplinary authority, in exercise of its discretion, had not fairly or adequately considered the representation.

The Appeal Before This Court

[16] Learned federal counsel for the defendants pointed out that this court has consistently held that being afforded a reasonable opportunity of being heard does not automatically translate to mean a right to be afforded an oral hearing. To support her contention she referred to *Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara & Anor* [1994] 2 CLJ 333, *Lembaga Tatatertib Perkhidmatan Awam Hospital Besar Pulau Pinang & Anor v Utra Badi K Perumal* [2001] 2 CLJ 525 and *Public Services Commission Malaysia & Anor v Vickneswary RM Santhivelu* [2008] 6 CLJ 573. She then submitted as follows:

(a) that the phrase "being given a reasonable opportunity of being heard" in art. 135(2) of the Federal Constitution is now settled;

(b) that the only time where the public officer might be given an oral hearing is if the disciplinary authority considers the case against the public officer requires further clarification and appoints a Committee of Inquiry as provided for under GO 26(5) of the GO (Chapter D);

(c) that the decision whether to appoint a Committee of Inquiry is in the hands of the disciplinary authority;

(d) that the courts should not step into the shoes of the disciplinary authority in deciding whether it was fair for them to have refused or allow the public officer the right to make oral representations; and

(e) that the courts should only be concerned with the manner in which that decision was taken and anything else would tantamount to the courts usurping the powers of the disciplinary authority and frustrating the intention of the legislature in enacting the General Orders.

[17] In *Public Services Commission Malaysia & Anor v. V Vickneswary a/p RM Santhivelu, supra*, which was referred to by federal counsel, Zaki Tun Azmi, PCA (as he then was) with regards to the provisions in the GO (Chapter D) said: A

> From the provisions of the general orders it is clear that it is *never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding whether it was fair to the respondent to have granted him a right to make oral representations* or whether he should be given such right although he did not ask for it. B

> From these GOs, it can be clearly concluded that *it is the disciplinary authority and not the court who is to decide whether the officer in his written representation has exculpated himself.* C
> (emphasis added)

[18] Federal counsel then submitted as follows: D

> In the present appeal, the procedure adopted by the disciplinary authority has complied strictly with the Regulations 1980. The respondent was issued with the show cause letter. He was invited to make a written representation, which he did. It is only after the disciplinary authority was satisfied that the written representation did not exculpate him that the authority decided to dismiss him. The authority did not appoint the Committee of Inquiry as they do not wish to seek any clarification from the respondent. E

F

[19] At the end of the day, she argued that the question posed by the defendants before this court must be answered in the negative, that is, the opinion of the disciplinary authority that the case against the public officer does not require further clarification through the appointment of a Committee of Inquiry under GO 26(5) of the GO (Chapter D) is not subject to a review/scrutiny by the courts and as such, prayed that the appeal be allowed with costs and that the decision of the courts below be set aside. G

[20] In opposing the appeal, counsel for the plaintiff argued that he is "entitled to protection from sufficient compliance with the rules of natural justice and the disciplinary procedure provided there for". For support he referred to *Mohd Ahmad v. Yang di Pertua Majlis Daerah Jempol, Negeri Sembilan & Anor* [1997] 3 CLJ 135 and *Ng Hock Cheng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405. H I

Judgment

[21] The same issue which has arisen in this appeal has been the subject-matter of several appeals before this court previously, albeit in the form of different questions posed but relating to the same issue.

[22] Article 135(2) of the Federal Constitution reads:

> No member of such a service shall be dismissed without being given a reasonable opportunity of being heard.

[23] General Order 26 of the GO (Chapter D) consist of 11 paragraphs prescribing the procedural steps to be followed in disciplinary proceedings and paras. 4 and 5 provide as follows:

> (4) If an officer does not furnish any **representation** within the specified time or *if he furnishes a representation which fails to exculpate himself to the satisfaction of the Appropriate Disciplinary Authority*, it shall then proceed to consider and decide on the dismissal or reduction in rank of the officer.
>
> (5) *Where the appropriate Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry* consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the officer's Head of Department shall not be selected to be a member of the Committee.
> (emphasis added)

[24] In the instant appeal, the plaintiff sought a declaration that his dismissal from the police force is unlawful, null and void and of no effect and that he is still an Inspector and entitled to all the salaries, emoluments and benefits due. The trial judge ruled that due to the nature of the disciplinary charges preferred against the plaintiff, the disciplinary authority should have held an oral inquiry and that their failure to do so is a breach of the rules of natural justice. As discussed earlier, the Court of Appeal dismissed the appeal by the defendants.

[25] In *Utra Badi* this court held that the right to be heard given by art. 135(2) of the Federal Constitution does not require that the member of the service facing the disciplinary charge be given an oral hearing and it could not be argued that the failure to give that person an oral hearing was a denial of justice.

[26] In *Vickneswary*, this court held as follows: A

(i) from the provisions of the General Orders it is clear that it is never the intention of the legislators that the courts should step into the shoes of the disciplinary authority in deciding whether it was fair to the respondent, ie, the member of B service facing the disciplinary charge to have granted him a right to make oral representations or whether he should be given such right although he did not ask for it;

(ii) it is clear from the facts that the respondent was given an opportunity to be heard whereby he had given a lengthy C written representation explaining in detail his innocence; and

(iii) it is not the court, but the disciplinary authority which has to decide the question of whether the respondent had exculpated himself by his written representation. D

[27] I dare say that the law is settled in cases of this genre. This can be gleaned from several decisions which were decided prior to *Utra Badi* and *Vickneswary*; see *Hajjah Halimatussaadiah binti Haji Kamaruddin v. Public Services Commission, Malaysia & Anor* [1994] E 3 CLJ 532, *Ghazi bin Mohd Sawi v. Mohd Haniff bin Omar, Ketua Polis Negara, Malaysia & Anor* [1994] 2 CLJ 333, *Zainal Hashim v. Government of Malaysia* [1979] 1 LNS 132 and *Najar Singh v. Government of Malaysia & Anor* [1974] 1 LNS 101.

[28] From the authorities referred to above, I am of the view that F the law is settled. Thus, an oral hearing may be given in instances where the disciplinary authority considers that the case against the officer requires further clarification and consequently appoint a Committee of Inquiry pursuant to GO 26(5) of the GO (Chapter D). If the disciplinary authority considers that no further G clarification is required, I do not think that the officer concerned can insist or demand that a Committee of Inquiry be appointed.

[29] We are a country governed by the rule of law and thus finality of the judgment is absolutely imperative and great sanctity H is attached to the finality of the judgment. In the normal course, it is the disciplinary authority which is the best judge as to whether the person should be dismissed. In that context, the court can only exercise its powers of interference in a limited number of cases where it is shown that the decision to suspend I

is arbitrary and/or a *mala fide* exercise of power and/or colourable exercise of power. These are the parameters on which a disciplinary authority must consider when exercising its powers under the GO (Chapter D). It is not for the courts to interfere with exercise of discretion by the disciplinary authority otherwise than in the circumstances set out.

[30] The use of authorities, or decided cases, is the establishment of some principle which a judge can follow in deciding the case before him. In the instant appeal, several authorities relating to the GO (Chapter D) were referred to as to what was intended and what it expressly provides. My question is what right have the courts to cut down the express power so given to the disciplinary authority by the General Orders? *Utra Badi* and *Vickneswary* are cases which established the principles of law *vis-a-vis* the General Orders. Are we entitled to disregard a previous decision of this court laying down a substantive rule of law? There is no doubt, in my view, that the *ratio decidendi* of the decision of this court in *Utra Badi* is that the right to be heard given by art. 135(2) of the Federal Constitution does not require that the person concerned be given an oral hearing and that a decision by a disciplinary authority not to give the person concerned an oral hearing after he has submitted a written representation is not a denial of justice. There is also no doubt, in my view, that the *ratio decidendi* of the decision of this court in *Vickneswary* would be as follows:

(a) under the provisions of the General Orders, the courts should not step into the shoes of the disciplinary authority in deciding whether it was fair to the person concerned, after he has made a written representation, to have granted him a right to make oral representation or whether he should be given such right although he did not ask for it; and

(b) it is not the court but the disciplinary authority which has to decide the question of whether the person concerned has exculpated himself by his written representation.

[31] From my reading of the judgments in *Utra Badi* and *Vickneswary* which reflected the reasons for the respective decisions, they leave no doubt as to the *ratio* of the respective decisions of this court. We must not accept the conclusions in these cases as *mere dictum* but as the *ratio decidendi* of the cases. *Utra Badi* and *Vickneswary* were former deliberate and explicit decisions of this court upon questions of law.

[32] In the instant appeal, I am of the view that the trial judge and the Court of Appeal did not properly appreciate the facts and the applicable law to arrive at a judicious decision. From my reading of the judgments of the trial judge and the Court of Appeal, the approach taken, with respect, was as if the matter was a criminal case wherein the provisions of the Criminal Procedure Code and the Evidence Act 1950 would seem to apply. This approach is erroneous. It must be stressed that the courts cannot introduce technicalities of a court of law to the disciplinary authority. Further, courts do not normally regard it as their function to interfere with the findings of fact by the disciplinary authority. In *R v. Deputy Industrial Injuries Commissioner, ex p Moore* [1965] 1 QB 456, Diplock LJ said (at p. 488):

> These technical rules of evidence, however, form no part of the rules of natural justice. The requirement that a person exercising quasi-judicial functions must base his decision on evidence means no more than it must be based upon material which tends logically to show the existence or non-existence of facts relevant to the issue to be determined, or to show the likelihood or unlikelihood of the occurrence of some future event the occurrence of which would be relevant. It means that he must not spin a coin or consult an astrologer, but he may take into account any material which, as a matter of reason, has some probative value, the weight to be attached to it is a matter for the person to whom Parliament has entrusted the responsibility of deciding the issue. **The supervisory jurisdiction of the High Court does not entitle it to usurp this responsibility and to substitute its own view for his.**
> (emphasis added)

[33] An initiation of disciplinary proceedings against an officer in the public service shall be based upon the code of conduct laid down in GO 26 of the GO (Chapter D). Disciplinary action is clearly a process for dealing with job-related behaviour that does not meet the code of conduct of officers in the public service. A departmental disciplinary action is concerned not with criminal offence but with misconduct. Departmental authorities have no power to punish an employee on a criminal charge, although such authorities may penalise an employee for his misconduct on identical facts. On the facts of the instant appeal, the defendants were basically doing that, ie, the five disciplinary offences were in relation to misconduct involving corrupt practices. It must also be remembered that the proceedings before the disciplinary authority were not criminal proceedings.

[34] The right to punish a citizen for crime is vested in the state whereas the right to penalise an employee for misconduct is in the employer because of the existence of relationship of master and servant and also because the General Orders so provide where public employees are concerned. Thus, an initiation of disciplinary proceedings against an officer in the public service shall be based upon the code of conduct laid down in GO 26 of the GO (Chapter D).

[35] I would think that the attitude of this court towards its previous decisions such as *Utra Badi* and *Vickneswary* upon questions of law should, in my opinion be the same. It is of supreme importance that people may know with certainty what the law is, and this end can only be attained by a loyal adherence to the doctrine of *stare decisis*. Little respect will be paid to our judgments if we overthrow that one day which we have resolved the day before. "We cannot say that the law was one thing yesterday but is to be something different tomorrow", per Lord Reid in *West Midland Baptist (Trust) Association Inc v Birmingham Corporation* [1970] AC 874. The instant appeal is no doubt an important case. Disciplinary authorities will be confused if we are to usurp their powers by telling them you should order an oral hearing in one case while in another you need not. They are the ones entrusted by the General Orders to make that decision and it is not for the court to usurp that function.

[36] The courts have very limited review powers over administrative determinations of public bodies and are constrained to confirm the findings in disciplinary hearings. The courts will only intervene in disciplinary cases where there was a fundamental procedural flaw. The courts cannot exceed its role in cases of this genre as the instant appeal. The courts cannot interfere merely because it may come to different conclusions on facts on the same basis of the same evidence. Weighing and assessing the evidence is the function of the disciplinary authority which is the body to which the legislature has entrusted the responsibility of deciding the issue, and not the courts. Hence, the court should approach cases of this genre as the instant appeal in the following way, namely, whether there has been an error in the process or whether there was procedural irregularity in the decision making proceedings leading to the public officer's dismissal.

[37] A disciplinary authority should not be burdened with the technicalities regarding standard of proof, the rules of evidence and procedure that are applied in a court of law. Following *Utra Badi* and *Vickneswary*, I am of the view that in the instant appeal, the disciplinary authority did observe the rules of natural justice and did give the plaintiff an opportunity to be heard. According to *Osborn's Concise Law Dictionary* (7th edn.), the words "natural justice" mean "the rules and procedure to be followed by any person or body charged with the duty of adjudicating upon disputes between, or the rights of other, eg, a government department." An opportunity to be heard simply means an opportunity to present one's side of the story. The result cannot be faulted or characterised as bad or defective when the proceedings were properly and regularly conducted. The plaintiff in the instant appeal was informed of the charges against him and was given ample opportunity of denying or explaining the alleged misconduct. He in fact did give his written representation dated 19 October 1993 to the Inspector-General of Police (the third defendant).

[38] In the instant appeal, the plaintiff sought a declaration that his dismissal is unlawful, null and void and of no effect. In cases of this genre, the court reviews the lawfulness of a decision or action made by the disciplinary authority which is a public body. Such action is tantamount to a challenge to the way in which the decision has been made by the public body rather than the rights and wrongs of the conclusion reached. The court is not really concerned with the conclusions of that process and whether the conclusions were "right", as long as the right procedures have been followed. In *Ng Hock Seng v. Pengarah Am Penjara & Ors* [1998] 1 CLJ 405, in delivering the judgment of this court, Peh Swee Chin FCJ said (at p. 159):

> Just like a professional body being the best tribunal to judge the seriousness of misconduct of its members, in a similar vein, an employer, including a government, is the best person to judge similarly the seriousness of misconduct of an employee.

[39] Thus, a court should not substitute what its thinks is the "correct" decision. What the court is concerned with is not the decision but the decision-making process. It does not entail the court substituting its discretion for that of the decision maker. "Unless that restriction on the power of the court is observed, the

court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power", per Lord Brightman in *Chief Constable of the North Wales Police Force v. Evans* [1982] 1 WLR 1155 at p. 1173.

[40] The courts should not assume the role of primary decision-taker by acting to regulate procedures found in the General Orders because this is not its constitutional function. Chapter D of the General Orders reinforces internal discipline and accountability for wrongdoings and poor performance and helps ensure that public officers will comply with their obligations. Public officers are held accountable for their actions and omissions when these represent a violation of the duties or obligations imposed on them by legislation. The rationale is that an offence committed by a public officer in the course of carrying out his duties negatively affects the public's trust in the administration, which is a public interest given special protection by both the criminal and administrative legal orders. Public officers are expected to make decisions and act solely in the public interest, without consideration of their private interests. Public employment being a public trust, the improper use of a public service position for private advantage is regarded as a serious breach of duty.

[41] In the instant appeal, the plaintiff sought a declaration that his dismissal is unlawful, null and void and of no effect. I have perused the appeal record and I am of the view that he is actually challenging the underlying policy basis for that decision rather than concentrating on challenging a decision which is defective procedurally. I have always thought that an application to the courts for a declaration is used to seek clarification of the law. Be that as it may, I am of the view that the plaintiff has failed to establish any error of law on the face of the record. He must establish an error, of law or fact or of judgment on the part of the disciplinary authority. Unless I am wrong, the judgment of the Court of Appeal seems to suggest that the disciplinary authority in the instant appeal acted without any evidence and that they never gave the plaintiff an opportunity to rebut. I would think that a disciplinary authority is better qualified to assess evidence arising in a disciplinary action and the gravity of any shortcomings. The courts should be slow to interfere with the decisions on matters of fact taken by a disciplinary authority. There must be a basis for the courts to substitute its own view for the view of a disciplinary authority before setting aside the decision on the facts.

[42] I have referred earlier to the *ratio decidendi* of this court in *Utra Badi* and *Vickneswary* and I would say that the *ratio decidendi* of both cases were correct and would govern the instant appeal. For the aforesaid reasons, I would answer the question posed in this appeal in the negative, ie, that the opinion of a disciplinary authority that the case against the public officer does not require further clarification through the appointment of a Committee of Inquiry under GO 26(5) GO (Chapter D) is not subject to a review or scrutiny by the courts. In consequence of this answer, I would allow this appeal by the defendants with costs here and below and set aside all orders of the courts below. I would also order that the deposit be refunded to the defendants.

[43] Before I conclude, I would think that it is apt that I should endeavour to say a few words in relation to a recent judgment of this court in the case of *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis and Anor* (since then reported – see *Yusof Sudin v. Suruhanjaya Perkhidmatan Polis & Anor* [2012] 1 CLJ 448), which was delivered on 11 July 2011 wherein I wrote a dissenting judgment. The instant appeal was heard on 25 April 2011, ie, prior to delivery of the decision in *Yusof Sudin* and judgment was reserved since then. Anyway, in *Yusof Sudin* the facts and the issue raised in that case were quite similar to the instant appeal. The question posed to this court in that appeal was worded differently and can be dissected in the following manner:

(a) that in *Utra Badi* and *Vickneswary*, the Federal Court held that "the right to be heard given by Article 135(2) of the Federal Constitution does not require the person concerned to be given an oral hearing";

(b) whether the principle in *Utra Badi* and *Vickneswary* is applicable in all cases or whether there are exceptions to this principle.

[44] My decision to the question posed in *Yusof Sudin* was as follows (at pp. 503-504):

> My answer would be that the principle applies in all cases. An oral hearing may be given in instances where the disciplinary authority considers that the case against the officer requires further clarification and consequently appoint a committee of inquiry pursuant to general order 26(5) of GO (Chapter D). If the disciplinary authority considers that no further clarification is required, I do not think that the officer concerned can insist or demand that a committee of inquiry be appointed.

A …

> … I would say that the question denote(s) that the appellant is not disputing the principle in *Utra Badi* and *Vickneswary* but is requesting this court to speculate on 'whether there are exceptions (to this general rule)'…

B

[45] In *Yusof Sudin* the appellant, a police officer, was dismissed from the police force after disciplinary proceedings were taken against him. He then sought a declaration, as in the instant appeal, that his dismissal was unlawful, unconstitutional, void and C of no effect. The High Court dismissed his claim and it was affirmed by the Court of Appeal. The learned judge of the High Court applied the same principles enunciated in *Utra Badi*.

[46] The majority decision of this court in *Yusof Sudin* did not D follow *Utra Badi* and *Vickneswary* and allowed the appeal by the appellant. In his judgment in allowing the appeal, Richard Malanjum CJSS who chaired the panel held that when there is a request by a public officer for an oral hearing after he had denied all the charges then he should be afforded an oral hearing to E satisfy the requirements of art. 135(2) of the Federal Constitution.

[47] In allowing the appeal, Zulkefli FCJ, the other member of the panel, said that both the High Court and the Court of Appeal failed to differentiate the factual circumstances and the issue for determination in *Utra Badi* with the appellant's case. The learned F FCJ differentiated the two cases, *inter alia*, as follows:

(a) that in *Utra Badi*, the issue for determination was not a request by the public officer to be given a right of an oral hearing but a request to be given the right of an oral hearing G for mitigation only before punishment was meted out;

(b) that in *Utra Badi*, there was no specific request made by the public officer for an oral enquiry;

(c) that *Utra Badi*'s case was a general principle that was H restricted to its own facts; it did not cover a situation where the officer in his representation letter gave an exculpatory statement and also made a special request for an oral hearing; in such a situation, this court is in a position to review and extend the general principle in *Utra Badi*'s case by stating the I exception to this general rule;

(d) that this court should distinguish *Utra Badi*'s case which stated that the right to be heard given by art. 135(2) of the Federal Constitution did not require the person concerned to be given an oral hearing, by recognising the fact that there were exceptions to this general rule;

(e) that if such exceptions were not recognised by the courts then the principle in *Utra Badi*'s case might lead to the disciplinary authority exercising its discretion arbitrarily by simply refusing to call for an enquiry for further clarification although the officer concerned may have furnished sufficient evidence to exculpate himself;

(f) in fact in the present case the disciplinary authority had not replied to the appellant's request for an oral hearing;

(g) that it was further found that the charges framed against the appellant were general in nature and lacking in particulars;

(h) that after considering the serious charges leveled against the appellant it was then found that the disciplinary proceedings taken against the appellant were null and void and that in all fairness the appellant ought to have been given an oral hearing as he had requested so as to enable him to make an effective and meaningful defence to the charges.

[48] I have to refer to *Yusof Sudin* in my judgment in the instant appeal not with a view to illustrate that the majority judgment in that case was wrong as opposed to my dissenting judgment but to highlight, from my understanding, the importance of judicial precedents and subsequently my approach to the law in relation to the instant appeal.

[49] Prior to *Utra Badi* and *Vickneswary*, decisions of the courts in cases of this genre have been far from consistent, alternating between strict and liberal interpretations of the General Orders resulting in a degree of contradiction. I am of the view that the result of these inconsistent judgments makes the subject matter difficult for the disciplinary authorities and the courts to comprehend or follow. I would have thought that *Utra Badi* and *Vickneswary* had laid the matter to rest. Alas, with the arrival of the majority decision in *Yusof Sudin*, I would think that we have now come to the cross-roads where once again this court, in

order to avoid the principles of law in decided cases such as *Utra Badi* and *Vickneswary*, endeavour to differentiate the situation in the appeals before them which is an indirect method of "overulling" the earlier decisions without saying so. I am of the view that it is not right to "overrule indirectly" a decision of this court unless we are clearly satisfied that it was wrong. The value attached to the doctrine of judicial precedent can be seen as far back as 1898 from the decision of the House of Lords in *The London Street Tramways Company, Limited v. The London City Council* [1898] AC 375. In that case, the House of Lords laid down that its decision upon a question of law was conclusive and would bind the House in subsequent cases and that an erroneous decision could be set right only by an Act of Parliament.

[50] A precedent can be defined as a judicial decision which serves as a rule for future determinations in similar or analogous cases. A precedent or authority is a legal case establishing a principle or rule that a court or other judicial body adopts when deciding in subsequent cases with similar issues or facts. A precedent that must be applied or followed is known as a binding precedent. I would think that this court must follow its own proclamations of law made earlier on other cases and honour these rulings. After all, this court is the highest court in the country. The doctrine of precedent, a fundamental principle of English law, is a form of reasoning and decision-making formed by case law. Precedents not only have persuasive authority but also must be followed when similar circumstances arise. Any principle announced by a higher court must be followed in later cases. In short, the courts are bound within prescribed limits by prior decisions of superior courts. Judges are also obliged to obey the set-up precedents established by prior decisions. This legal principle is called *stare decisis*. Adherence to precedent helps to maintain a system of stable laws. Judicial precedent means the process whereby judges follow previously decided cases where the facts are of sufficient similarity. The doctrine of judicial precedent involves an application of the principle of *stare decisis*, ie, to stand by the decided. In practice, this means that inferior courts are bound to apply the legal principles set down by superior courts in earlier cases. This provides consistency and predictability in the law.

[51] It has been said in certain textbooks that the decision or judgment of a judge may fall into two parts, ie, the *ratio decidendi* (reason for the decision) and *obiter dictum* (something said by the way). The *ratio decidendi* of a case is the principle of law on which a decision is based. When a judge delivers judgement in a case he outlines the facts which he finds have been proved on the evidence. Then he applies the law to those facts and arrives at a decision, for which he gives the reason *(ratio decidendi)*. The judge may also go on to speculate about what his decision would or might have been if the facts of the case had been different. This is an *obiter dictum*. The binding part of a judicial decision is the *ratio decidendi*. An *obiter dictum* is not binding in later cases because it was not strictly relevant to the matter in issue in the original case. However, an *obiter dictum* may be of persuasive (as opposed to binding) authority in later cases.

[52] It has also been said that distinguishing a case on its facts, or on the point of law involved, is a device used by judges usually in order to avoid the consequences of an earlier inconvenient decision which is, in strict practice, binding on them. What is reasonably distinguishable depends on the particular cases and the particular court – some judges being more inclined to 'distinguish' disliked authorities than others. In *Jones v. Secretary of State for Social Services* [1972] All ER 145, Lord Reid said (at p. 149):

> *It is notorious that where an existing decision is disapproved but cannot be overruled courts tend to distinguish it on inadequate grounds. I do not think that they act wrongly in so doing; they are adopting the less bad of the only alternatives open to them.* But this is bound to lead to uncertainty for no one can say in advance whether in a particular case the court will or will not feel bound to follow the old unsatisfactory decision. On balance, it seems to me that overruling such a decision will promote and not impair the certainty of the law.
>
> But that certainty will be impaired unless this practice is used sparingly. ... and that it should only be in rare cases that we should reconsider questions of construction of statutes or other documents.
> (emphasis added)

[53] The common law tradition is built on the doctrine of *stare decisis* which directs a court to look to past decisions for guidance on how to decide a case before it. This means that the legal rules applied to a prior case with facts similar to those of the case now

before a court should be applied to resolve the legal dispute. The use of precedent has been justified as providing predictability, stability, fairness and efficiency in the law. Reliance upon precedent contributes predictability to the law because it provides notice of what a person's rights and obligations are in particular circumstances. It also means that lawyers can give legal advice to clients based on settled rules of law. There is certainty in the law. There is also uniformity in the law. Similar cases will be treated in the same way. The use of precedent also stabilises the law.

[54] This court create precedents. The use of precedent is an indispensable foundation on which to decide what is the law and how it should be applied in individual cases. *Utra Badi* and *Vickeswary* are decisions that settled the law in cases of this genre with finality. I would think that this court would have need to hesitate long before distinguishing *Utra Badi* and *Vickneswary* on inadequate grounds or on a hypothetical issue raised by the appellants in appeals before this court such as whether there are exceptions to the *ratio decidendi* formulated in both authorities. Such hypothetical issues raised in cases of this genre can have disruptive and seemingly unfair consequences and extremely capricious results. It creates uncertainty in the law and would seriously hinder administration of the General Orders by the government departments resulting in administrative confusion. For the aforesaid reasons adumbrated, I am unable to follow the majority decision in *Yusof Sudin*.

[55] My learned brother Hashim Yusoff FCJ has read the draft of this judgment and has expressed his agreement thereto.